

1 **PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY**2 Name Victor Hernandez
(Last) (First) (Initial)3 Prisoner Number K-316594 Institutional Address P.O. Box 8504 Fac D-3-128-L Coalinga Ca 93210

530 NIN
FEB 27 2008
RICHARD W. WICKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

6
7 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA**JF**8 Victor Hernandez

(Enter the full name of plaintiff in this action.)

CV 08 11549 Case No. _____
(To be provided by the clerk of court)10 VS.
JAMES YATES WARDEN PLEASANT VALLEY11 **PETITION FOR A WRIT
OF HABEAS CORPUS****(PR)**12 STATE PRISON13
14 (Enter the full name of respondent(s) or jailor in this action)16 **Read Comments Carefully Before Filling In**17 **When and Where to File**

18 You should file in the Northern District if you were convicted and sentenced in one of these
 19 counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa,
 20 San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in
 21 this district if you are challenging the manner in which your sentence is being executed, such as loss of
 22 good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

23 If you are challenging your conviction or sentence and you were not convicted and sentenced in
 24 one of the above-named fifteen counties, your petition will likely be transferred to the United States
 25 District Court for the district in which the state court that convicted and sentenced you is located. If
 26 you are challenging the execution of your sentence and you are not in prison in one of these counties,
 27 your petition will likely be transferred to the district court for the district that includes the institution
 28 where you are confined. Habeas L.R. 2254-3(b).

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or
3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which
4 you are imprisoned or by whom you were convicted and sentenced. These are not proper
5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief
7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose
8 custody you are now and the Attorney General of the state in which the judgment you seek to attack
9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 1. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda
13 County Superior Court, Oakland):

14 SANTA CLARA SUPERIOR COURT CALIFORNIA

15 Court Location

16 (b) Case number, if known SUPER CT 186850

17 (c) Date and terms of sentence 25 years to Life 3-Strikes

18 (d) Are you now in custody serving this term? (Custody means being in jail, on
19 parole or probation, etc.) Yes _____ No _____

20 Where?

Pleasant Valley State Prison

21 Name of Institution: _____

22 Address: P.O. Box 8504 Coalinga Ca 93210

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for
24 more than one crime, list each crime separately using Penal Code numbers if known. If you are
25 challenging more than one sentence, you should file a different petition for each sentence.)
26 Possession of PCP
27 _____
28 _____

1 3. Did you have any of the following?

2 Arraignment:

Yes

No

3 Preliminary Hearing:

Yes

No

4 Motion to Suppress:

Yes

No

5 4. How did you plead?

6 Guilty Not Guilty Nolo Contendere

7 Any other plea (specify) _____

8 5. If you went to trial, what kind of trial did you have?

9 Jury Judge alone Judge alone on a transcript

10 6. Did you testify at your trial?

Yes No

11 7. Did you have an attorney at the following proceedings:

12 (a) Arraignment

Yes No

13 (b) Preliminary hearing

Yes No

14 (c) Time of plea

Yes No

15 (d) Trial

Yes No

16 (e) Sentencing

Yes No

17 (f) Appeal

Yes No

18 (g) Other post-conviction proceeding

Yes No

19 8. Did you appeal your conviction?

Yes No

20 (a) If you did, to what court(s) did you appeal?

Court of Appeal

Yes No

22 Year: _____ Result: _____

23 Supreme Court of California

Yes No

24 Year: _____ Result: _____

25 Any other court

Yes No

26 Year: _____ Result: _____

28 (b) If you appealed, were the grounds the same as those that you are raising in this

- 1 petition? Yes _____ No _____
- 2 (c) Was there an opinion? Yes _____ No _____
- 3 (d) Did you seek permission to file a late appeal under Rule 31(a)?
4 Yes _____ No _____

5 If you did, give the name of the court and the result:
6 _____
7 _____

8 9. Other than appeals, have you previously filed any petitions, applications or motions with respect to
9 this conviction in any court, state or federal? Yes No

10 [Note: If you previously filed a petition for a writ of habeas corpus in federal court that
11 challenged the same conviction you are challenging now and if that petition was denied or dismissed
12 with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit
13 for an order authorizing the district court to consider this petition. You may not file a second or
14 subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28
15 U.S.C. §§ 2244(b).]

16 (a) If you sought relief in any proceeding other than an appeal, answer the following
17 questions for each proceeding. Attach extra paper if you need more space.

18 I. Name of Court: Superior Court

19 Type of Proceeding: Habeas Petition

20 Grounds raised (Be brief but specific):

21 a. VIOLATION OF PLEA AGREEMENT

22 b. VIOLATION OF DUE PROCESS

23 c. INEFFECTIVE ASSISTANCE OF COUNSEL

24 d. _____

25 Result: DENIED Date of Result: _____

26 II. Name of Court: SIXTH DISTRICT COURT OF APPEALS

27 Type of Proceeding: HABEAS PETITION

28 Grounds raised (Be brief but specific):

1 a. INEFFECTIVE ASSISTANCE OF COUNSEL

2 b. VIOLATION OF DUE PROCESS

3 c. VIOLATION OF PLEA AGREEMENT

4 d. _____

5 Result: DENIED JAN 5, 2007

Date of Result: _____

6 III. Name of Court: CALIFORNIA SUPREME COURT

HABEAS PETITION

7 Type of Proceeding: _____

8 Grounds raised (Be brief but specific):

9 a. MOTION FOR APPOINTMENT OF COUNSEL

10 b. VIOLATION OF DUE PROCESS

11 c. INEFFECTIVE ASSISTANCE OF COUNSEL

12 d. VIOLATION OF PLEA AGREEMENT.

13 Result: DENIED JULY 11, 2007

Date of Result: _____

14 IV. Name of Court: _____

15 Type of Proceeding: _____

16 Grounds raised (Be brief but specific):

17 a. _____

18 b. _____

19 c. _____

20 d. _____

21 Result: _____

Date of Result: _____

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes No

24 Name and location of court: _____

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to
27 support each claim. For example, what legal right or privilege were you denied? What happened?

28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: PETITIONER IS UNABLE TO READ OR WRITE AND HAS
6 A THIRD GRADE READING AVERAGE AND WAS DENIED COUNSEL

7 Supporting Facts: The petitioner has had assistance in the
8 preparation of this document but is verified to have a grade point
9 average of the third grade, and was denied counsel. in all
10 proceedings of his state habeas corpus.

11 Claim Two: The trial court promised petitioner he would only
12 serve 20 percent of his sentence as condition of his plea bargain
13 and refused to allow petitioner to withdraw his plea.
14 Supporting Facts:

15 Trail court judge clearly informed petitioner his sentence would be
16 reduced as a condition of his plea bargain. The law was changed
17 after the plea which would not allow good time credits.

18 Claim Three: The trial court FASLEY PREPARED A DOCUMENT THE
19 PETITIONER DID NOT FILE ASA HABEAS CORPUS.

20 Supporting Facts: The State Court denied relief on the grounds that
21 petitioner filed a habeas petition and did not raise the violation
22 of the plea agreement. Thus may not file a second habeas petition.
23 An evidentiary hearing would prove petitioner had never filed.

24 If any of these grounds was not previously presented to any other court, state briefly which
25 grounds were not presented and why:
26
27
28

1 List, by name and citation only, any cases that you think are close factually to yours so that they
2 are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning
3 of these cases:

4

5 SEE ATTACHED MEMORANDUM

6

7 Do you have an attorney for this petition? Yes No

8 If you do, give the name and address of your attorney:
9

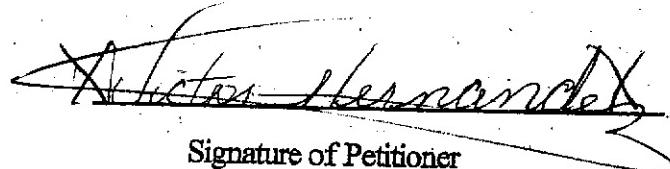
10 WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in
11 this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

12

13 Executed on 2-14-08

14 Date

15 Signature of Petitioner



16 REQUEST FOR JUDICIAL NOTICE

17 Petitioner requests this court appoint counsel because he has
18 a verified inability to read past the Third Grade and requests
19 this court appoint counsel. An evidentiary hearing would show
20 the alleged petition filed by petitioner was fasley entered into
the record to prevent relief. If the court would appoint
counsel to inspect the court record and compare the prison tat
(Rev. 8/02) petitioner was in when the habeas was filed it would determine
petitioner could not have been responsible for the petition.

21

22 Petitioner provided the State Court with a copy of his reading
and writing abilities and the court did not return those documents.

23 I declare under the penalty of perjury that my TABE SCORES are
24 between THIRD AND FOURTH GRADE and below 7th grade.

25

26

27

28

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JUL 26 2007

S150047

CLERK SUPREME COURT

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re VICTOR HERNANDEZ on Habeas Corpus

The petition for writ of habeas corpus is denied. (See *In re Robbins* (1998) 18 Cal.4th 770, 780.)

SUPREME COURT
FILED

JUL 11 2007

Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

Court of Appeal - Sixth App. Dist.

F I L E D

SEP 1 - 2006

MICHAEL J. YERLY, Clerk

In re VICTOR HERNANDEZ,
on Habeas Corpus.

H030513
(Santa Clara County
Super. Ct. No. 186850)

By _____ DEPUTY

BY THE COURT:

The petition for writ of habeas corpus is denied.

(Premo, Acting P.J., Elia, J., and Duffy, J., participated in this decision.)

Dated SEP 1 2006 PREMO, J. Acting P.J.

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re VICTOR HERNANDEZ,
on Habeas Corpus.

H030961
(Santa Clara County
Super. Ct. No. 186850)

BY THE COURT:

The petition for writ of habeas corpus is denied.

(Premo, Acting P.J., Elia, J., and Duffy, J., participated in this decision.)

Dated JAN 5 2007 PREMO, J. Acting P.J.

California Department Of Corrections And Rehabilitation
State of California-Youth And Adult Correctional Agency

Arnold Schwarzenegger, Governor

DEPARTMENT OF CORRECTIONS AND REHABILITATION

Pleasant Valley State Prison

P.O. Box 8500

Coalinga, Ca. 93210 Supreme Court of Ca

350 McAllister St.

DATE:

7/18/07

TO:

SR 14 94162

Dear Correspondent:

The enclosed legal correspondence received for the following

Inmate Hernandez CDCR # JL 31695 is Name +
(Name) (Number) Number do

not match

Undeliverable at this facility and **FORWARDED** as follows:

- Inmate paroled/discharged on _____ to the following location: _____ (Date) (Office/Unit Location)
- Inmate is currently housed at the following CDCR facility:

(Institution)

- Inmate is temporarily out to court and housed at the following city/county facility:

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JUL 26 2007

CLERK SUPREME COURT

(Location: City, County and State)

- Inmate is currently housed at the following medical facility:

(Facility)

(Location: City, County and State)

- Inmate is currently enroute to the following facility:

(Facility)

(Location: City, County and State)

NAME: M. S. Johnson

PLEASANT VALLEY STATE PRISON

DATE: 7/18/07



1 Victor Hernandez K-31659
2 P.O.Box 8504 Fac D-3-128-L
3 P.O. Box 8504
4 Coalinga Ca 93210

5
6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA

8
9
10 MEMORANDUM OF POINTS AND AUTHORITIES

11 APPEAL FROM THE SANTA CLARA SUPERIOR COURT BEFORE THE HONORABLE JUDGE
12 PAUL BERNAL OCT 7, 2006.

13
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21 BY PETITIONER
22 VICTOR HERNANDEZ
23 IN PRO. PER.
24
25

Exhibit "B"



ISSUES PRESENTED

Petitioner alleged in a habeas petition, that as a condition of his plea agreement, that his eligibility for prison credits had been misrepresented to him by the trial court when it stated he could earn as much as twenty percent good-time work-time credits. The truth of the matter was that petitioner could not earn any credits.

In an additional issue petitioner requested that the trial court appoint counsel for his habeas proceeding, because petitioner was not able to read or write, and supported it with copies of his recent TABE education scores. The court denied petitioner's habeas petition and failed to rule on his motion for appointment of counsel.

The Superior Court in it's ruling reasoned that the petition filed by the petitioner was impermissible and a successive attack and brought over 11 years since his guilty plea. (SEE EXHIBIT "A" MOTION FOR THE APPOINTMENT OF COUNSEL). The court argued that petitioner had filed a petition in 2004, and should have included the instant claims in that petition.

In addition the court urged that the petitioner had not given any reason or explanation as to why the claim was not brought previously.

PETITIONER'S REASON FOR SEEKING REVIEW

The petitioner denied filing the 2004 writ and requested that the court appoint counsel in helping him determine the means by which the writ in 2004 was filed. This would have included a search to determine whether the petitioner was housed where the writ was alleged to have been filed from. Petitioner urged a review of the mailing envelope that the writ was sent in would show evidence he did not send the writ or know it was being filed.

In sum the petitioner urges that he did not send the 2004 writ.

1 petition and provided the court with a declaration to that effect.

2 At issue and in dispute is the date that the petitioner became
3 aware of the change in the law regarding good time credits that were
promised to him as a condition of his guilty plea .

4 In sum the Superior court urges that the petitioner has failed to
5 give any explanation as to why the claim was not brought previously is
disputed because the declaration and other exhibits attached to the
petitioner's Habeas petition clearly disputes the courts opinion.

6 The petitioner points to a direct response from the records dept.
7 at the prison requesting to know how inmates whom could not read or
write were informed of the change in the law or the People v Stofle
10 (1996) 45 Cal App 4th 417, notice to all inmates was given to inmates
11 who could not read or write. The response informed the petitioner that
12 the court had a duty to inform the petitioner .

13 In the current petition petitioner has listed Exhibit A a copy
14 of the document regarding notice which is not disputed by the court
in its ruling and opinion.

15 Exhibit "B" is the Stofle notice which was posted in the library
16 for everyone to read.

17 Exhibit "C" is a copy of the habeas petition filed in the Superior
18 court which was denied.

19 Exhibit "D" is a copy of the Motion for appointment of counsel
20 and petitioner's education scores which is undisputed that petitioner
21 is unable to read now and was unable to read at the time of his guilty
plea.

22 Exhibit "E" is a copy of the Superior Court opinion on July 8, 2006
23 and Oct. 27, 2006 which was also denied.

DISCUSSION

1 The petitioner argues that he first requested the appointment
2 of counsel because he is unable to understand the current proceedings
3 and provided the court with copies of his Tabe scores dated 6-17-05
4 and 6-28-06.

5 The Superior Court in its slip opinion failed to address this
6 question which effects everyone in the State of California who is
7 unable to read and write to a level to understand the proceedings.

8 The petitioner argues that he is not competent and was not in 2004
9 and thus what ever claimed filing was not and could not have been
10 with his knowledge.

11 The petitioner again requests this court appoint counsel to
12 represent him on appeal in this matter because he is not able to read
13 or write and has relied on the help of others to present these matters
14 before the court today.

15 The court at no time in its slip opinion state petitioner's
16 plea bargain was not violated by the trial courts inducement of
17 a false promise. In addition the court could have corrected the error
18 by resentencing the petitioner consistent with the terms of the promise
19 it made to lure the petitioner into pleading guilty.

20 The second question presented is if inmates ~~wheneanthetdeven help~~ read or write and the housing facility has no plan or policy for
21 providing the same news it provides to the rest of the population :

22 (1) Are the hearing impaired, and blind inmates as well as
23 inmates who cannot read or write entitled to the same Notice that
24 was provided to the rest of the prison population.

25 The Superior Court's opinion violates Federal law because it
26 does not provide equal treatment.

THE COURT HAS A DUTY TO RESPOND TO ALL CONTENTIONS

When a State prisoner files a petition to the Superior Court and frames the issues presented the Court has a duty to respond in some kind of way. A denial of a Motion is common in this State. To not respond at all does not make a record required for review by the Court of Appeals.

The Superior Court was clear in its slip opinion to state " By requiring that such challenges be made reasonably, promptly, we vindicate society's interest in the finality of its criminal judgments as well as the public's interest in the orderly and reasonably prompt implementation of its laws".

The petitioner argues, this rush to judgment and manner does not contain a provision for people who can not read or write and thus is a violation of Federal and State Due Process laws.

RELIEF REQUESTED

- (1) Petitioner requests that this court appoint counsel to represent him in this appeal.
 - (2) Petitioner requests this court remand this issue back to the Superior Court for a ruling on his motion for appointment of counsel.
 - (3) That this Court order the Superior to conform to the Plea bargain it made or allow the petitioner to withdraw his plea.

Filed this 5th day of December 2006 at pleasant Valley State Prison.

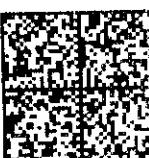
~~X Victor Hernandez~~
VICTOR HERNANDEZ IN PRO. PER. WITH HELP

Pleasant Valley State Prison
Victor Hernandez
K-31659 D3-128-10wcr

P.O. Box 8504
Calinga, CA 93210



THIS MAIL WAS GENERALLY MAILED FROM ZIPCODE 95113



Legal Mail
United States District Court of Appeals
Northern District of California.
San Jose District of Santa Clara.
280 South First # 3035
San Jose, California, 95113-3099